

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Applicant : William A. Banks et al.

Serial No. : 10/007,105

Filed : December 4, 2001

For : A SYSTEM FOR PROCESSING PRODUCT INFORMATION IN SUPPORT OF COMMERCIAL TRANSACTIONS

Examiner : Michael A. Cuff

Art Unit : 3627

RESPONSE TO EXAMINER'S ANSWER TO APPEAL BRIEF

May It Please The Honorable Board:

Remarks

The Answer does not discuss the substantive arguments raised in the Appeal Brief. Rather the Answer raises the argument, that was never previously raised, that claims 1-25 contain poor claim construction and nonfunctional descriptive material as well as “massive use of “intended use” phrases”. Contrary to the Answer, it is respectfully submitted that the claims are fully positively recited and do not use “intended use” phrases at all.

The Answer states that claim 10 merely provides nonfunctional descriptive material. This is incorrect. Claim 10 depends on claim 4 and in context, the limitation of claim 10 involves “a data processor for receiving product information” including “product usage information comprising at least one of (a) product purchase history data, (b) product parts list data and (c) product transaction related data” and “for **updating** said first database information to incorporate received product information including product sales data and contract sales terms of a vendor and **recalculates** purchase pricing of products using said product sales data and contract sales terms **in response to detection of a difference** between stored product information and said received **product information**”. The “product usage information” of claim 10 is fully integrated and functionally implicated in the, updating, recalculating and detection activities. Consequently, claim 10 is NOT mere nonfunctional descriptive material. The Answer further compounds the error by stating that nonfunctional descriptive material cannot render an invention nonobvious relying on *In re Ngai*. However, the Rejection is one of anticipation under 35 USC 102(e) and not an obviousness rejection at all. Further, Applicant believes the claims fully distinguish over the recited reference for the reasons given in the Appeal Brief.

Accordingly it is respectfully submitted that the rejection of Claims 1– 26 should be reversed.

Respectfully submitted,
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